

REMARKS

Claims 90-93 and 95-108, 110, 112, and 114-118 are currently pending, with claims 90, 93, 107, 112, and 116 being independent. Claims 90, 93, 100, 107, and 112 have been amended and new claims 115-118 have been added.¹ Claims 109, 111, and 113 have been cancelled, without prejudice.

The Examiner has rejected claims 90-93 and 95-100 over Kirwin in combination with Swanson, relying on Kirwin for teaching a method of tissue shrinkage. For the reasons set forth below, applicants respectfully request withdrawal of these rejections.

Independent claim 90, as amended, recites "moving the energy delivery device to a second selected site in the collagen containing tissue after delivering sufficient energy to the selected site, the second selected site being directly adjacent or overlapping with the selected site." Independent claim 93, as amended, recites "delivering sufficient energy with the distal portion of the energy delivery device to a second selected site that is directly adjacent or overlapping the first selected site." Kirwin fails to disclose or suggest moving an energy delivery device to a second selected site that is directly adjacent or overlapping the first selected site, as currently claimed. In fact, Kirwin explicitly teaches against treating areas that are overlapping or that are directly adjacent to one another. Kirwin at 485 ("These areas should not overlap. In fact, it is better to leave a small margin of untouched tissue about each one.")

The Examiner's reliance upon Swanson in combination with Kirwin does nothing to overcome Kirwin's teaching away from the claimed invention, and for at least these reasons, Applicants respectfully request reconsideration and withdrawal of the rejections of independent claims 90 and 93, and their respective dependent claims.

The Examiner has also rejected claims 101-114 over Kirwin in combination with Swanson as applied to claims 90-93 and 95-100, and further in view of Sand. For the reasons set forth below, applicants respectfully request withdrawal of these rejections.

Claims 101-103 and 104-106 depend from claims 90 and 93, respectively. Applicants submit that Sand does nothing to overcome Kirwin's explicit teaching away from the claimed invention, and therefore, for at least the reasons discussed above with respect to independent

¹ Support for the amendments and the new claims may be found, for example, at page 7, lines 15-21; page 12, lines 7-19; page 18, lines 14-22; page 19, line 5 to page 20, line 2.

claims 90 and 93, dependent claims 101-103 and 104-106 are patentable over Kirwin in view of Swanson and further in view of Sand.

Independent claim 107, as amended, recites "contacting a selected site in at least the portion of collagen containing tissue at the joint to which sufficient energy has previously been delivered." Neither Kirwin, Swanson, nor Sands discloses or suggests such a feature, and in fact, as discussed above, Kirwin teaches away from treating areas that are overlapping or that have been previously treated. For at least this reason, independent claim 107 and its dependent claims are patentable over the combination of Kirwin, Swanson, and Sand proposed by the Examiner.

Finally, independent claim 112 recites "moving the energy delivery device to a second selected site after delivering sufficient energy to the selected site, the second selected site being directly adjacent or overlapping with the selected site." For at least the reasons discussed above with respect to the similar recitation in amended claim 90, the proposed combination of Kirwin, Swanson, and Sands fails to disclose or suggest such a feature, and neither Swanson nor Sands, in particular, overcomes Kirwin's teaching away from the claimed invention. For at least these reasons, Applicants respectfully request reconsideration and withdrawal of the rejections of independent claim 112 and its dependent claims.

Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants may have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by the applicant to any of the examiner's positions does not constitute a concession of the examiner's positions. The fact that applicant's comments have focused on particular arguments does not constitute a concession that there are not other good arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

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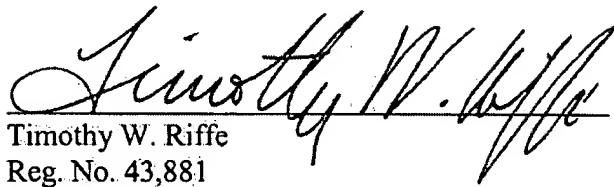
Respectfully submitted,

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